

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS**

JACK EARL VANCE,

Petitioner,

v.

**CIVIL ACTION NO. 2:14-CV-8
CRIMINAL ACTION NO. 2:05-CR-43
(BAILEY)**

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert [Crim. Doc. 233 / Civ. Doc. 10]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R&R"). Magistrate Judge Seibert filed his R&R on April 16, 2014, wherein he recommends this Court dismiss the petitioner's § 2255 petition with prejudice.

Pursuant to 28 U.S.C. § 636 (b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v.***

Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R&R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that service was accepted on August 18, 2014 [Crim. Doc. 235 / Civ. Doc. 12]. The petitioner timely filed his objections on May 2, 2014 [Crim. Doc. 236 / Civ. Doc. 13]. Accordingly, this Court will review those portions of the R&R to which the petitioner objected under a *de novo* standard of review. The remaining portions will be reviewed for clear error.

The R&R recommends dismissal with prejudice of the instant petition because it is an unauthorized second or successive petition. Pursuant to 28 U.S.C. § 2244 and 28 U.S.C. § 2255, this Court is without authority to hear petitioner's second federal habeas petition without first seeking leave from the court of appeals. See **United States v. Winestock**, 340 F.3d 200, 207 (4th Cir. 2003). In his Objections, the petitioner states that he would not have filed the instant petition if he knew he first had to seek leave from the court of appeals. Accordingly, this Court will dismiss this matter without prejudice to provide the petitioner the opportunity to pursue his action through the appropriate channels.

Upon careful review of the above, it is the opinion of this Court that the **Report and Recommendation [Crim. Doc. 233 / Civ. Doc. 10]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, this Court **ORDERS** that the petitioner's § 2255 petition **[Crim. Doc. 211 / Civ. Doc. 1]** be **DENIED** and **DISMISSED WITHOUT PREJUDICE** to his right to seek leave with the Fourth Circuit Court of Appeals for an order authorizing this Court to consider his application.

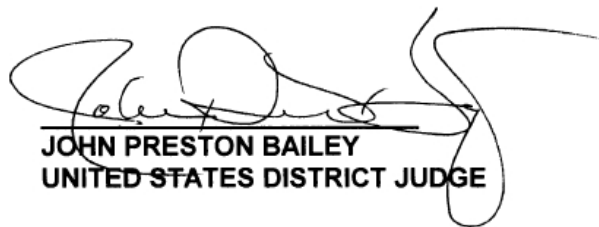
Additionally, the Motion for investigation into Assistant U.S. Attorney Shawn Morgan for Misconduct and Obstruction of Justice [**Crim. Doc. 229**] is **DENIED AS MOOT**. This Court further **DIRECTS** the Clerk to enter judgment in favor of the respondent and to **STRIKE** this case from the active docket of this Court.

As a final matter, upon an independent review of the record, this Court hereby **DENIES** a certificate of appealability, finding that Mr. Vance has failed to make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: May 7, 2014.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE